



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,160	01/20/2004	Silke Kohlhasse	P24855	6657

7055 7590 07/12/2007
GREENBLUM & BERNSTEIN, P.L.C.
1950 ROLAND CLARKE PLACE
RESTON, VA 20191

EXAMINER	
JEAN-LOUIS, SAMIRA JM	

ART UNIT	PAPER NUMBER
1609	

NOTIFICATION DATE	DELIVERY MODE
07/12/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com
pto@gbpatent.com

Office Action Summary

Application No.

10/759,160

Applicant(s)

KOHLHASE ET AL.

Examiner

Samira Jean-Louis

Art Unit

1609

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-77 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 19-77 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application
- ☐ Other: ____.

DETAILED ACTION

Species Election

Claims 19-20 are generic to the following disclosed patentably distinct species comprising of a cosmetic or dermatological composition which comprises:

- 1) one or more C12-C40 fatty acids,
- 2) one or more C12-C40 fatty alcohols,
- 3) of at least one of an amphiphilic polymer, an associative polymer and a siloxane elastomer,
- 4) at least one of sodium hydroxide and potassium hydroxide,
- 5) of one or more C12-C40 polyethoxylated fatty acid esters having a polyethoxy chain length of from 10 to 100,
- 6) at least one low molecular weight surfactant

These claims as listed encompass species that are so diverse that a reference anticipating one of the species would not anticipate or made obvious the other species.

Consequently, applicant is required to:

- a) elect a specific carbon chain length of fatty acids (i.e. C12 or C13 or C14 etc....as mentioned above in 1). Furthermore, given that applicant stated that "at least one or more" carbon chain fatty acids may be included in their cosmetic or dermatological composition, applicant is required to state whether 1 fatty acid chain or more will be included in the aforementioned composition. Moreover, in the event that a combination of fatty acids is elected, applicant is required to state the specific

Art Unit: 1609

combination of fatty acid chains to be included (for both claims 19 and 20 and claims dependent therefrom).

b) elect a specific carbon chain length of fatty alcohols and state whether one or more fatty alcohol chains will be included (as stated above in a for both claims 19 and 20 and claims dependent therefrom),

c) elect a specific type of polymer (i.e. applicant needs to elect a particular type of polymer be it amphiphilic, associative or a siloxane elastomer as mentioned in 3). Once a particular type of polymer is elected out of the "amphiphilic, associative or siloxane elastomer" group, applicant is further required to elected a specific species of that particular polymer. For example, if a siloxane elastomer is elected as the type of polymer to be included in the composition, applicant will need to further elect a type of siloxane elastomer such as polysilicone-11 as mentioned in the Specifications on page 14 line 14. Furthermore, given that applicant stated that "at least one" polymer may be included in their cosmetic or dermatological composition, applicant is required to state whether 1 polymer or a combination thereof will be included in the aforementioned composition. Moreover, in the event that a combination of polymers is elected, applicant is required to clearly identify the combination of the polymers selected (for both claims 19 and 20 and claims dependent therefrom).

d) elect a type of hydroxide out of sodium hydroxide and potassium hydroxide and/or state whether a combination of both will be utilized in the aforementioned composition (for both claims 19 and 20 and claims dependent therefrom)

Art Unit: 1609

e) elect a specific carbon chain length out of C12-C40 polyethoxylated fatty acid esters and to elect the specific accompanied polyethoxy chain length between 10 to 100 (for claims 19 and claims dependent therefrom).

f) Finally, applicant is required to state whether or not a low molecular weight surfactant will be included and if elected, the particular type of such low molecular weight surfactant or combination thereof that will be selected (for claims 19 and claims dependent therefrom).

Optional Further Comprising Species

Claims 56 and 59 are generic to various disclosed patentably distinct species and given the above-mentioned reasons, applicant is required to 1) state if the species listed in claim 56 and 59 will be included or not in the aforementioned composition, 2) if they are included then applicant is required to state if only one or a combination of such species will be included, 3) to elect and state the particular type of species and/or combination of species out of the list in claim 56 that will be included in the composition.

Claim 57 and 60 are also generic for the same above-mentioned reasons, thus applicant is required to state if one or more of the non-polar lipid will be utilized, to elect the particular type of non-polar lipid to be utilized in the composition and the particular type of wax to be utilized out of the list in claims 57 and 60.

Claims 58 and 61 are generic and for the same above-mentioned reasons, therefore applicant is required to state if only one or more polar lipids will be included in the composition. Furthermore, applicant is required to elect a particular type of polar lipids and combination thereof.

Art Unit: 1609

Claims 62 and 64 are also generic and due to the above-mentioned reasons, applicant is required to disclose if a solubilizer will or will not be included in the cosmetic or dermatological composition. If indeed a solubilizer will be included, then applicant is required to elect a particular type of solubilizer that will be utilized in such composition.

Claims 66-69 are also generic for the above-mentioned reasons, thus applicant is required to disclose whether or not the species listed in claims 66-69 will be included in the aforementioned composition. In the event that the species in claims 66-67 will be included, then applicant is required to state if only one or a combination of such species will be included. Furthermore, applicant is required to identify that particular type of species or combination thereof.

Claims 70-77 are all generic for the above-mentioned reasons, therefore applicant is required to elect a specific type of product as named separately in claims 70-77 for the above-mentioned composition.

Overall, the species listed in this set of claims are diverse or distinct because they would require a search of many different types of species, which would constitute an undue burden to the office. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Art Unit: 1609

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. See MPEP § 809.02(a).

Because the above-mentioned species election requirement is quite complex, a telephone call to the applicant's agent to request an oral election was not attempted. See MPEP 812.01.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samira Jean-Louis whose telephone number is 571-270-3503. The examiner can normally be reached on 7:30-5 PM EST M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin H. Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1609

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


ARDIN H. MARSCHEL
SUPERVISORY PATENT EXAMINER